

D.T.E. 94-176-D

Petition of Stow Municipal Electric Department for a determination by the Department of Telecommunications and Energy of damages pursuant of St. 1898, c. 143, and G.L. c. 164, §§ 42 and 43.

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FOR: STOW MUNICIPAL ELECTRIC DEPARTMENT

Petitioner

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FOR: HUDSON LIGHT AND POWER DEPARTMENT

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FOR: MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY

Intervenor

## I. INTRODUCTION

On January 30, 2001, the Department of Telecommunications and Energy ("Department") issued an Order in Stow Municipal Electric Department, D.T.E. 94-176-C (2001) ("Order") determining, among other things, that it is in the public interest to include in the property to be sold to Stow Municipal Electric Department ("SMED") a portion of Hudson Light and Power Department's ("HL&PD") power supply portfolio. Order at 41. The Order became final on February 27, 2001 after written notice by HL&PD that it will not pursue a claim for severance damages under G.L. c. 164, § 43 ("Section 43"). See Stow Municipal Electric Department, D.T.E. 94-176-C, Letter from HL&PD to Mary Cottrell dated February 27, 2001; Order at 40.

On March 9, 2001, SMED request a stay of decision ("Request For Stay") and an extension of the appeal period. SMED requested the stay pending resolution of its Motion For Reconsideration and the resolution of any subsequent appeals to the Supreme Judicial Court ("SJC"). SMED stated that there is an apparent conflict between the statutory requirements of Section 43 and its rights to reconsideration by the Department pursuant to 220 C.M.R. § 1.11(10) and judicial review pursuant to G.L. c. 30A ("Chapter 30A"). Neither HL&PD nor Massachusetts Municipal Wholesale Electric Company filed comments regarding SMED's request for a stay.

## II. ANALYSIS

Neither the Department's enabling statutes nor its procedural rules provide explicitly for a stay pending reconsideration of a Department order. CTC Communications Corp., D.T.E. 98-18-A at 4 (1998). It is within the Department's discretion to grant a stay of a Department order, however. See Stow Municipal Electric Department, 94-176-A at 2 (1996); Boston Edison Company, 92-130-2, at 10-12 (1992); G.L. c. 30A, § 14(3); Cella, Administrative Law and Practice, § 1555 (Massachusetts Practice Series 1986). The circumstances in which the Department has granted a stay include (1) when the consequences of the adjudicatory decisions are far-reaching, and (2) when the immediate

impact upon the parties in a novel and complex case is substantial. CTC Communications Corp., D.T.E. 98-18-A at 4; Stow Municipal Electric Department, D.P.U. 94-176-A at 2.

Typically, the granting of reconsideration does not require the Department to stay its order. CTC Communications Corp., D.T.E. 98-18-A at 10. Customarily, such further proceeding is consistent with the continued operation of the order. Id. In the present case, however, there is a potential conflict between the parties' obligations under Section 43 and SMED's rights to agency review pursuant to 220 C.M.R. § 1.11(10) and judicial review pursuant to Chapter 30A. Section 43 requires HL&PD to tender good and sufficient deed of conveyance of property to the Town of Stow within a specified time period. Pursuant to that provision of Section 43, HL&PD has stated that it will tender a deed on or about March 31, 2001. When HL&PD tenders its deed, however, further provisions of Section 43 will be invoked that require SMED to respond, by either accepting or rejecting HL&PD's tender, on or about May 30, 2001.

In contrast to the statutory framework of Section 43, there are no dates certain for both the Department's determination of SMED's Motion For Reconsideration and the SJC decision regarding subsequent appeal. Therefore, while the Department will complete its further proceeding on the Motion For Reconsideration with appropriate dispatch, we cannot guarantee a decision by a date that will not impede SMED's decision-making process regarding HL&PD's tender. This uncertainty of a decision date applies even more so to an SJC decision. Under these circumstances, failure to grant a stay may void, as a practical matter, SMED's rights to a Department's reconsideration and appellate review. This result may cause substantial harm to SMED.

In contrast, the Department discerns no harm to any party by the grant of a stay. In particular, at this point in this proceeding, HL&PD's interest rests primarily in complying with applicable statutory requirements of Section 43 regarding tendering of a deed. A stay, however, relieves HL&PD of these requirements until all avenues of review are exhausted.

Upon consideration of relevant factors, the Department finds that a stay of the Order is warranted. Accordingly, SMED's Request For Stay is granted until determination of SMED's Motion For Reconsideration and any subsequently filed appeal. Therefore, any statutory requirements under Section 43 that follow from the issuance of the Order apply only when the stay expires. Because the Department is still considering the Motion For Reconsideration, it is also appropriate to extend the judicial appeal period pursuant to G.L. c. 25. § 5. The period in which the parties may file a petition for appeal shall be extended ten (10) days after the date of Department's ruling on the SMED's pending Motion For Reconsideration.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner